

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

RECEIVED

APR 20 2000

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Review of the Commission's) MM Docket No. 98-204
Broadcast and Cable)
Rules and Policies)

**OPPOSITION TO PETITION FOR PARTIAL RECONSIDERATION AND
CLARIFICATION OF THE NEW BROADCAST EEO RULES BY**

**National Organization for Women Foundation
Center for Media Education
Feminist Majority Foundation
NOW Legal Defense and Education Fund
Philadelphia Lesbian and Gay Task Force
Wider Opportunities for Women
Women's Institute for Freedom of Press
United Church of Christ**

Of Counsel:

Anthony Cavalluzzi
Diana Tate
Law Students
Georgetown University Law Center

Jeneba Jalloh Ghatt, Esq.
Angela Campbell, Esq.
Institute for Public Representation
Georgetown University Law Center
600 New Jersey Avenue, N.W.
Washington, D.C. 20001
(202) 662-9535

Counsel for:
NOW Foundation, *et al.*

No. of Copies rec'd 0110
List ABCDE

April 20, 2000

TABLE OF CONTENTS

SUMMARY.....	ii
I The Commission Should Not Further Weaken The New EEO Rules.....	2
A. Recruiting For Every Job Vacancy Is A Necessary Element Of Ensuring Nondiscrimination In Recruitment.....	2
B. The Commission Should Modify Option A Without Reducing Or Eliminating The Required Number Of Supplemental Measures.....	3
C. There Is No Longer A Need To Exempt Stations In Areas With A Minority Population Of Five Percent Or Less.....	5
D. The Commission Encourages And Grants Credit For The Use Of The Internet As A Recruitment Tool.....	5
II The Recordkeeping Requirements Set Forth In The New EEO Rules Are Necessary For The FCC To Ensure Discrimination Is Eliminated.....	7
III The Commission Has Justified The Additional Reporting Requirements.....	9
A. The Annual EEO Public File Report Is A Necessary Element Of Monitoring Recruiting And Employment Activities Of Broadcasters.....	9
B. The New Biennial Statement Of Compliance Is A Necessary Addition To The New EEO Rules.....	11
C. The Commission Must Retain The Annual Employment Report (Form 395-B) Requirement.....	12
CONCLUSION.....	13

SUMMARY

NOW Foundation, *et al.* oppose NAB's request to further reduce or eliminate the outreach, recordkeeping, and reporting requirements of the new EEO Rules. Specifically, the Federal Communications Commission (the "Commission") must continue to require recruiting for every job vacancy. This requirement has been an effective means of preventing discrimination in the broadcast industry. Broad recruitment prevents reliance on insular recruiting measures that have traditionally excluded women and minorities.

NOW Foundation, *et al.* oppose NAB's request to reduce or eliminate *any of the* supplemental measures under Option A. Option A offers broadcasters a flexible "safe harbor." If anything the Commission should consider revising the supplemental measures to better ensure that minorities and women learn about job opportunities.

The Commission should not reinstate the exemption for stations in areas where the minority population is less than five percent because the Commission no longer judges a broadcaster's compliance with the EEO rules through the minority representation in the station. In any case, stations located in communities with less than five percent minority representation would still need to do outreach to women.

NAB's claim that the Commission does not give "regulatory" credit for using the Internet in job recruitment is incorrect. The Commission does recognize and will give credit under both Option A and B for use of the Internet in recruiting. What NAB really seems to want is for broadcasters to be able to rely entirely on the Internet in their recruitment efforts. The Commission should continue to reject sole reliance on Internet recruiting. While the Internet is

an important resource, by itself, it does not reach a sufficient segment of the population to satisfy the Commissions EEO goals.

The recordkeeping requirements of the new EEO rules are necessary for the FCC to ensure discrimination is eliminated. These requirements have been significantly reduced from the old rules. The remaining recordkeeping requirements are also necessary to ensure broadcasters are performing quality self assessments

In addition, the reporting requirements are a necessary element of the new EEO rules. Specifically, the Commission must retain the EEO Public File Report. The Commission has consistently required that the information in this report be collected, and requiring that it be kept in the public file is not an overly burdensome request. Requiring that the public file be kept on the Internet is an important means of making this information available to actual and potential listeners and viewers. The biennial Statement of Compliance, while simple to fill out, is an important enforcement tool. The annual Employment Report provides information that is necessary for developing trend reports relied upon by Congress, the Commission and the public. The alternatives offered by the broadcasters would reduce the utility of these reports.

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Review of the Commission's)	MM Docket No. 98-204
Broadcast and Cable)	
Rules and Policies)	

**OPPOSITION TO PETITION FOR PARTIAL RECONSIDERATION AND
CLARIFICATION OF THE NEW BROADCAST EEO RULES**

The National Organization for Women Foundation, Center for Media Education, Feminist Majority Foundation, NOW Foundation Legal Defense and Education Fund, Philadelphia Lesbian and Gay Task Force, Wider Opportunities for Women, Women's Institute for Freedom of the Press and United Church of Christ (NOW Foundation, *et al.*) oppose the elimination or further reduction of the new EEO rules as proposed by the National Association of Broadcasters (NAB). *See Petition for Partial Reconsideration and Clarification, In the Matter of Review of the Commission's Broadcast and Cable Equal Employment Opportunity Rules and Policies*, MM Docket No. 98-204 (March 16, 2000) [hereinafter *Pet. Recon.*]. The Commission should not reduce or eliminate any part of the new EEO rules nor should it reinstate the 5% minority exception. The Commission should also retain and strengthen its recordkeeping and reporting requirements of the Annual Public File Report, the biennial Statement of Compliance, and the Annual Employment Report.

I. The Commission Should Not Further Weaken The New EEO Rules.

NAB argues that the Commission's new EEO rules should be weakened or eliminated because they are too burdensome. *Pet. Recon.* at 3 - 4. In NOW Foundation, *et al.*'s view, the new EEO rules have been weakened substantially and are not burdensome. Thus, NOW Foundation, *et al.* strongly oppose any further weakening of the EEO rules.

A. Recruiting For Every Job Vacancy Is A Necessary Element Of Ensuring Nondiscrimination In Recruitment.

The new EEO rules maintain the well-established requirement that broadcasters must widely disseminate information regarding job vacancies. *Review of the Commission's Broadcast and Cable Equal Employment Opportunity Rules and Policies and Termination of the EEO Streamlining Proceeding*, 15 FCC Rcd 2329 at ¶¶ 3, 7 (released February 2, 2000) [hereinafter *EEO Order*]. NAB argues against such a requirement, stating that it is no longer necessary as "minorities and females have, in fact, made great inroads into the broadcast industry." *Pet. Recon.* at 3. This argument is patently and demonstrably wrong. While the FCC's EEO rules, in effect from 1968 to 1998, have ensured an increased presence of minorities and women in the broadcast industry, **minorities and women remain underrepresented overall, particularly with respect to higher level jobs.**

By 1997, women comprised 46.2% of the labor force but only represented 34.9% of the broadcast industry's total full-time employees in the upper-four job categories.¹ See Public Notice, *1997 Broadcast and Cable Employment Report* at 1 (June 23, 1998) [hereinafter *1997*

¹The four categories are entitled: Officials and Managers, Professionals, Technicians, and Sales Workers.

Trend Report]. Likewise, minorities made up 26.0% of the national labor force but were only employed at a rate of 18.2% in the upper-level positions of the broadcast industry. *Id.* The cable industry employed minorities at a rate of 20.9% in upper-level positions, while employing women in these same categories at a rate of 29.4%.² *Id.* The broadcast and cable industries have further to go.

Broadcasters and cable operators must not be allowed to return to relying solely on insular recruitment measures, as it will undoubtedly stagnate the representation of women and minorities. The Commission must maintain the essential element of wide dissemination of information regarding every job vacancy in order to afford all qualified individuals the opportunity to gain employment within the broadcast industry.

B. The Commission Should Modify Option A Without Reducing Or Eliminating The Required Number of Supplemental Measures.

NAB opposes Option A, claiming that it is too burdensome because it requires broadcasters to implement supplemental recruitment measures in addition to broad recruitment. *Pet. Recon.* at 4. Thus, NAB urges eliminating either the requirement to recruit for all vacancies or the supplemental outreach efforts.

NOW Foundation, *et al.* strongly oppose elimination or reduction of the requirement under Option A. If anything, the FCC should revise the menu under Option A to better focus efforts to ensure information is being disseminated in a manner that reaches women and

²The NAACP recently released a report indicating that African Americans were poorly represented in upper-level positions within the cable industry. *NAACP 1999 Report on the Cable Industry* (April 12, 2000) ("While doing well in overall employment [of African Americans], the [cable] industry shows signs of a gap in the critical areas of board representation and corporate officers and managers.").

minorities. Only two of the thirteen supplemental recruitment measures require broadcasters to work with organizations "whose membership includes substantial participation of women and minorities." *EEO Order* at ¶¶ 101-02. NOW Foundation, *et al.* are concerned that, unless this is changed, broadcasters could effectively exclude women and minorities while technically fulfilling their obligations under Option A. In any event, Option A should not be cut back. Option A already addresses broadcasters' asserted concerns regarding burdensomeness by providing the opportunity to choose from thirteen different measures to fulfill their EEO requirements in a manner that most suits the needs and resources of their individual stations. Smaller stations need only perform two measures over a two year period. For example, a station with five to nine employees would be in compliance under Option A by simply: (1) hosting one job fair; and (2) listing each upper-level opening in a job bank. Since these are measures that stations are likely to do anyway, it is difficult to take seriously NAB's claim that the supplemental outreach measures "could eliminate Option A as a choice for many smaller broadcasters." *Pet. Recon.* at 4.

Moreover, Option A provides broadcasters with a "safe harbor." Broadcasters who recruit for every vacancy and complete the 2 - 4 outreach measures can be sure that they are in compliance. In providing this safe harbor, the FCC is responding to the NAB's prior objections that the Commission has not adequately explained what type of outreach efforts must be taken to comply with the EEO rules. *See, e.g.,* National Association of Broadcasters, Comments, *Streamlining Broadcast EEO Rules & Policies*, MM Docket No. 96-16, at 11 (July 11, 1996) (arguing that the EEO rules are vague). Having been provided with the clarity they requested, broadcasters cannot now claim that the rules are too burdensome.

C. There Is No Longer A Need To Exempt Stations In Areas With A Minority Population Of Five Percent Or Less.

NAB argues the FCC should reinstate an exemption for stations located in areas with only a five percent or less minority population. *Pet. Recon.* at 5 - 6. NAB asserts that "by removing this exemption, [the FCC] is ultimately requiring these stations to find minorities where virtually none live." *Id.* at 6. It fears that such stations will be "unduly targeted for inquiries or sanctions." *Id.*

NAB's fears are completely unfounded. The Commission has made it plain that the new EEO rules focus on recruitment, not workforce statistics or parity. Thus, broadcasters located in areas with exceptionally small minority populations are in no way disadvantaged. EEO Order at ¶ 131. Stations can only be sanctioned for failing to recruit broadly and/or failing to participate in the supplemental measures of Options A or B. Stations located in homogenous communities are capable of disseminating recruitment information to the local community.

Moreover, the Commission notes that the 5% exemption would not apply to women "given that women typically represent about half of the labor force of every metropolitan area regardless of size." *Notice of Proposed Rule Making*, 13 FCC Rcd 23004 at ¶ 68 n.100 (1998) [hereinafter *NPRM*]. Because broadcasters located in communities with few minorities must recruit broadly to comply with the EEO rules with respect to women, no additional burden is placed on a station located in a homogenous communities.

D. The Commission Encourages And Grants Credit For The Use Of The Internet As A Recruitment Tool.

NAB complains that the Commission fails to give broadcasters "regulatory credit" for using the Internet as a means of recruitment and unreasonably rejects the exclusive use of

Internet recruiting as proposed by the Broadcast Executive Directors Association ("BEDA"). *Pet. Recon.* at 7. NOW Foundation, *et al.* believe that NAB has mischaracterized the FCC's position, and in any case, the FCC's rejection of the BEDA proposal was appropriate. *See* NOW Foundation, *et al.* Letter to William E. Kennard in Response to BEDA (January 13, 2000) [hereinafter NOW Foundation, *et al.* Letter].

There is nothing in the new EEO rules that prohibits or discourages broadcasters from recruiting via the Internet as part of EEO compliance. Contrary to NAB's claims, the Commission has not rejected the Internet as an outreach tool. Instead, the Commission has actively encouraged its use in recruiting. *Id.* at ¶ 86. Under Option A, the Commission specifically includes participation in "job banks or Internet programs such as those described in the model program developed by BEDA." *Id.* at ¶ 101. Additionally, broadcasters selecting Option B can use Internet-based recruitment as part of their self-designed program.

Although the Commission advocates the use of the Internet, it also recognizes its limitations as the **sole** means of recruitment. *EEO Order* at ¶ 86. NAB suggests that the Internet is a recruitment tool that would "virtually ensure" that "anyone truly interested" in a broadcast career would seek information regarding job openings. *Pet. Recon.* at 7. However, NAB fails to acknowledge the social and economic realities that prevent the Internet from being a universal or exclusive tool.

In 1999, the National Telecommunications and Information Administration ("NTIA") released a study finding current disparities in the use of the Internet according to location, income and race. *Falling Through the Net: Defining the Digital Divide*, NTIA/U.S. Department of Commerce, July 1999 [hereinafter *NTIA Study*]. NAB cites the *NTIA Study* in support of its

assertion that the Internet is the best means to reach minorities. *Pet. Recon.* at 7. But NAB misunderstands the study. While NTIA did conclude that minorities are more likely than non-minorities to use the Internet to conduct job searches, the study clearly shows that minorities are significantly disadvantaged in terms of access when compared to Whites. *NTIA Study* at 34 ("Blacks and Hispanics are less connected everywhere (such as at home, school, library, or community center) than Whites are at home."). Specifically, the *NTIA Study* found that 37.7% of Whites access the Internet from any location (i.e., home, school, work, etc.) while Blacks and Hispanics only access the Internet from any location at 19.0% and 16.6% respectively. *Id.* at 45. Thus, while the Internet is a valuable recruitment tool, it is not sufficient as the only means of disseminating information.³ As the *NTIA Study* indicates, the digital divide is too pervasive and too wide to allow all segments of society to be reached by means of the Internet alone.

II. The Recordkeeping Requirements Set Forth In The New EEO Rules Are Necessary For The FCC To Ensure Discrimination Is Eliminated.

NAB argues that the recordkeeping requirements in the new rules are burdensome and have been increased without any justifiable reason. *Pet. Recon.* at 9, 10. In reality, these requirements have been reduced, impose no significant burden, and are actually helpful to the industry.

³In addition to problems of access, there are numerous practical issues regarding facilities that offer Internet access in terms of availability (e.g., limited hours of operation, length of lines, number of computers), maintenance of systems (e.g., inoperable computers), and location (e.g., long travel time required to reach facilities with computers). There also remains the problem of individuals being able to find the appropriate websites. For example, we conducted a brief search using terms "jobs broadcasting" and "jobs tv." Only one out of the three popular search engines we used listed the online job bank ("www.careerpage.org") referenced in BEDA's proposal. NOW Foundation, *et al.* Letter at 2.

Contrary to NAB's assertion, the recordkeeping requirements have been substantially reduced, not increased. As the Commission has already stated, the old rules required broadcasters with five or more employees to maintain records on the person hired from each applicant pool and on the recruitment source, gender, and race or ethnic status of every applicant and every interviewee for every position. *Joint Petition by 50 Named State Broadcasters Association for Stay of New Broadcast EEO Rule, Memorandum Opinion and Order*, MM Docket Nos. 98-204 and 96-16, FCC 00-132, at 12 (2000) [hereinafter *Denial of Stay*]. The new EEO rules do not require the collection of any records of race, ethnicity, or gender of interviewees or persons hired. *Denial of Stay* at ¶ 12 n.4. Furthermore, under Option A, broadcasters do not even have to collect records regarding the race, ethnicity, or gender of applicants. *Denial of Stay* at ¶ 12 n.4.

Second, the remaining recordkeeping requirements are necessary to ensure that broadcasters remain in compliance. These requirements will help broadcasters assess whether their efforts are reaching the community broadly. Tele-Communications, Inc. stated in comments that, "the collection of such information will greatly benefit cable entities' own internal assessment of their recruitment practices, allowing them to quickly identify and remedy problem trends or ineffective practices."⁴ Ensuring quality self assessment is certainly a

⁴Tele-Communications, Inc. Comments; The National Cable Television Association also stated in comments to the Commission that, "maintaining these detailed records, cable operators will be able to show that they are undertaking credible efforts to recruit qualified minority and female applicants for all vacancies." National Cable Television Association Comments; Both sets of comments were filed in the *Review of the Commission's Broadcast and Cable Equal Employment Opportunity Rules and Policies and Termination of the EEO Streamlining Proceeding*, MM Docket No. 98-204 and MM Docket No. 96-16, (March 1, 1999).

justifiable reason for the recordkeeping requirements. We note that the cable industry has not complained that the requirements are burdensome, even though their recordkeeping requirements are virtually identical.

III. The Commission Has Justified The Additional Reporting Requirements.

NAB argues that the annual EEO Public File Report, the biennial Statement of Compliance, and the Annual Employment Report are unjustified and overly burdensome. *Pet. Recon.* at 11. NAB's opposition to these reports seems based on a goal to avoid public scrutiny, and getting rid of these reporting requirements would allow them to accomplish this goal.

A. The Annual EEO Public File Report Is A Necessary Element Of Monitoring Recruiting And Employment Activities Of Broadcasters.

NAB argues that the EEO Public File Report is unnecessary and onerous. *Pet. Recon.* at 11. Specifically, it states that maintaining this report is a new requirement which is too costly and will result in the unnecessarily broad dissemination of this information. *Pet. Recon.* at 12, 13. NAB's claims lack merit. The only reason for NAB's opposition to these reporting requirements is the broadcaster's desire to hide from public scrutiny. As NAB must realize, the less the public knows, the more insulated the industry becomes. This is precisely why the Public File Report is important. It will force broadcasters to face the public, and it will give the public the ability to express an informed opinion as to the broadcaster's EEO activities. The EEO Public File Report is a necessary and non-burdensome element of the new EEO rules.

First, the EEO Public File Report does not require broadcasters to collect any new information. The information collected in the EEO Public File Report was necessary for broadcasters to complete old Form 396. The only additional requirement of the EEO Public File

Report is that this information must now be kept in the public file. These files are an important means for broadcasters to learn how to better serve the public and give the public access to information about their community broadcasters. *Review of the Commission's Rules regarding the main studio and local public inspection files of broadcast television and radio stations, Report and Order*, 13 FCC Rcd 15691, at ¶ 2 (1998).

Second, citing the Commission's decision in the *Review of the Commission's Rules regarding the main studio and local public inspection files of broadcast television and radio stations, Memorandum Opinion and Order*, NAB claims that the Commission intended that the public inspection file only be available to the public which the station was serving. *Pet. Recon.* at 12, citing 14 FCC Rcd 11113 at ¶ 15. This is a blatant distortion of the Commission's intent. The Commission stated that its goal in the main studio and public inspection file order was to minimize regulatory burdens. 14 FCC Rcd 11113 at ¶ 1 (1999). While the Commission chose not to require stations to maintain public file information on the Internet in order to minimize their burden, it did not reject arguments that the public information may be of use to outside parties. 14 FCC Rcd 11113, at ¶ 15. In fact, the Commission explicitly recognized that members of the public located outside of the immediate community have legitimate reasons for examining EEO records of broadcasters. For example, national organizations and academics may be collecting data and keeping track of trends in the industry, and citizens may retain counsel outside of the listening area who need access to this information. 14 FCC Rcd 11113, at ¶ 15.

Third, NAB is inconsistent in arguing that the Internet should be its exclusive recruitment mechanism, *Pet. Recon.* at 7, while opposing the requirement that broadcasters with web sites

make public inspection files available on line. *Pet. Recon.* at 12. As the Commission has previously stated, putting the EEO Public File Report on the Internet will make the information contained within it much more accessible to the local public. 13 FCC Rcd 15691, at ¶ 2.

Furthermore, while the public can see the racial make up of the television employees in front of the camera, access to the public file is necessary to learn the racial make up of employees behind the camera. With this information, the public can express its opinion by watching or listening to stations that have a diverse work force while avoiding those that do not.

Finally, NAB complains that putting the EEO Public File Report on their web sites is too costly; however, broadcasters cite no figures regarding cost. *Pet. Recon.* at 12. NAB specifically discusses stations which are running sites that are used only as conduits for people to listen to their audio over the Internet. *Pet. Recon.* at 13. However, by offering these services, a broadcaster's listening public is expanded. Keeping the EEO Public File Report on the Internet becomes even more important in these cases.

B. The Biennial Statement Of Compliance Is A Necessary Addition To The New EEO Rules.

NAB claims the biennial Statement of Compliance is unnecessary, NOW Foundation, *et al.* disagree. *Pet. Recon.* at 14, 15. The biennial Statement of Compliance is a simple form that only requires broadcasters to certify that they have complied with the Commission's EEO Rule over the previous two years and allows them to elect Option A or B. *EEO Order* at ¶ 136.

Although simple to fill out, the Statement of Compliance is an important enforcement tool. By requiring these statements every two years, the Commission can ensure broadcasters will monitor their compliance with the EEO rules. Biennial filing is necessary because of increased license

terms for broadcasters. Moreover, given the frequent turnover of broadcast stations, biennial filing is necessary to assure accountability.

The Statement of Compliance serves many goals, and was, in fact, suggested by NAB itself. *Pet. Recon.* at 14. NAB argues that self assessments and certification alone should be enough to ensure compliance with the EEO rules. *Pet. Recon.* at 14. However, without collecting information on employment data and EEO efforts, the FCC will have no way of verifying that the Statement of Compliance is accurate. Moreover, self assessment, while necessary, is only effective when it works in conjunction with regular reporting and keeping a public inspection file.

C. The Commission Must Retain The Annual Employment Report (Form 395-B) Requirement.

NAB argues that the Commission should eliminate the Annual Employment Report because of fears that the Commission will "subject the industry to further review and alteration of the EEO rules." *Pet. Recon.* at 15, 16. Instead NAB suggests the Commission utilize a "tear-off" sheet that separates the identity of a station with the data collected, and that this information be collected on a biennial, rather than an annual, basis. *Pet. Recon.* at 16. NOW Foundation, *et al* oppose both of these suggestions.

NAB's fears that the information gathered in these annual reports will be used to decide whether specific broadcasters have complied with the EEO rules are baseless. The Commission has stated at least twice that it will not use the data for "assessing an individual station's EEO compliance." *EEO Order* at ¶ 165; *Denial of Stay* at ¶ 11. However, the Commission, Congress

and the public need this information to determine whether the rules are effective overall, and whether they are still needed. *EEO Order* at ¶164.

NAB's suggestion that the Commission use a "tear-off" sheet should be rejected.

Following trends to ensure the success of the new EEO rules requires more than knowing these numbers in the aggregate. Knowing the differences in success of the rules in different parts of the country or in regard to different kinds of broadcasters could allow the Commission to fine tune the rules. Furthermore, using the tear-off sheet would allow broadcasters to avoid public scrutiny. Members of the public have legitimate reasons to know the gender and racial make up of the stations that they listen to or watch. Just as parents may visit schools to see the gender and racial make-up of their staffs before deciding to send their children there, or investors may investigate corporate practices before investing in a company, listeners and viewers may want to know the gender and racial make-up of the individuals behind the programs they support. A tear-off sheet would eliminate the public's right to this information.

NAB's suggestion that the Commission only collect the information in the employment report every two years should also be rejected. Collection of this information on an annual basis is necessary for the trend reports to be accurate. Furthermore, form 395-B has been significantly reduced, as the attached chart shows. *See Appendix A*. This reduction makes the annual filing of 395-B a very small burden.


CONCLUSION

The Commission should reject the arguments of NAB. The only modification the Commission should even consider would be to further focus the new EEO rules to ensure that all

qualified applicants, including women and minorities, are being given equal employment opportunity within the broadcast industry.

Of Counsel:

Anthony Cavalluzzi
Diana Tate
Law Students
Georgetown University Law Center

A handwritten signature in cursive script, reading "Jeneba Jalloh Ghatt", written over a horizontal line.

Jeneba Jalloh Ghatt, Esq.
Angela Campbell, Esq.
Institute for Public Representation
Georgetown University Law Center
600 New Jersey Avenue, N.W.
Washington, D.C. 20001
(202) 662-9535

Counsel for:
NOW Foundation, *et al.*

April 20, 2000

APPENDIX A

Side-by-Side Comparison of EEO Regulations

OLD EEO RULES	OPTION A	OPTION B
<p><u>Recruitment</u></p> <p>1. Use minority organizations and organizations for women, media, educational institutions and other potential sources for minority and female applicants to supply referrals whenever job vacancies are available. 47 C.F.R. §73.2080(2) (1998).</p> <p>2. Evaluate its employment profile and job turnover against the availability of minorities and women in its recruitment area by 47 C.F.R. 73.2080(3)(1998) :</p> <ul style="list-style-type: none"> a. comparing the composition of the relevant labor area with composition of the station's workforce. b. where there is underrepresentation of either minorities and/or women, examining the company's personnel policies and practices to assure that they do not inadvertently screen out any group and take appropriate action where necessary. Consider looking to available data on representation in the available labor force of minorities and women in the available labor force are generally available on a metropolitan statistical area. 	<p><u>Recruitment</u></p> <p>1. Widely disseminate all full-time job vacancies (stations must provide notice of openings to qualifying organizations that request such notice as part of their obligation to widely dissemination vacancies)</p> <p>3. Stations must participate in ongoing recruitment initiatives. Stations with 5-10 full time employees must participate 2 of a list of 13 activities. Stations with 10 full time employees or more must participate in 4.</p>	<p><u>Recruitment</u></p> <p>1. Widely disseminate all full-time job vacancies (stations must provide notice of openings to qualifying organizations that request such notice as part of their obligation to widely dissemination vacancies)</p> <p>2. Design own broad and inclusive outreach program</p>

OLD EEO RULES	NEW EEO RULE: OPTION A	NEW EEO RULE: OPTION B
<p><u>Recordkeeping</u> Retain records listing⁷</p> <ol style="list-style-type: none"> 1. each full-time job vacancies filled by job title and upper four job category and the number of women and minorities that filled vacancy 2. each media source station where advertised and the number of minority and women referred by that source 3. each educational institution used for recruitment purposes 4. each minority or women's organization contacted to encourage referral of qualified minority and women applicants. 5. each promotion filled, by race and gender including those in upper four job categories 6. labor force data for the MSA 7. dated copies of all advertisements, bulletins, letters, faxes, e-mails etc used to fill each position. 8. documentation necessary to demonstrate performance of supplementary outreach initiatives 9. the total number of interviews for each vacancy and the referral source for each interviewee. 10. the date each job was filled and referral source for each interview. 	<p><u>Recordkeeping</u> Retain records, in electronic format if choose, that FCC may request later</p> <ol style="list-style-type: none"> 1. listing of full-time job vacancies filled by job title. 2. the recruitment sources used to fill each vacancy, including any organizations which requested notification. 3. dated copies of all advertisements, bulletins, letters, faxes, e-mails etc used to fill each position. 4. documentation necessary to demonstrate performance of supplementary outreach initiatives 5. the total number of interviews for each vacancy and the referral source for each interviewee. 6. the date each job was filled and referral source for each interview. 	<p>Recordkeeping Retain records, in electronic format if choose, that FCC may request later</p> <ol style="list-style-type: none"> 1. listing of full-time job vacancies filled by job title. 2. the recruitment sources used to fill each vacancy, including any organizations which requested notification. 3. dated copies of all advertisements, bulletins, letters, faxes, e-mails etc used to fill each position. 4. data reflecting recruitment source by race and gender of applicants

⁷Information required in numbers 1 thru 6 was necessary for filing old Form 396 and broadcasters needed to collect information in numbers 7 thru 10 in the event they are selected for further review after the Commission determines that a station's employment profile as compared with the applicable labor force falls below the Commission's processing criteria.


OLD EEO RULES	OPTION A	OPTION B
<p>Reporting</p> <ol style="list-style-type: none"> 1. Form 395-B (filed annually w/FCC) 2. Public Inspection File (filed at station) 3. Form 396 including data on recruitment source, gender and race of every applicant and every interview for every position and of the person hired from each applicant pool, by race and gender (filed at renewal w/ FCC) 4. Form 396-A (filed with construction permit, assignment or transfer applications) 5. Mid-term Review (TV stations) 	<p>Reporting</p> <ol style="list-style-type: none"> 1. Form 395-B (filed annually w/FCC) 2. Public Inspection File⁸ (filed at station) 3. Form 396 excluding data previously required (filed at renewal w/ FCC) 4. Form 396-A (filed with construction permit, assignment or transfer application) 5. Mid-Term Review (TV & radio stations with 10 full-time employees) 6. Initial Election Statement (filed once) 7. Statement of Compliance (filed every two years) 	<p>Reporting</p> <ol style="list-style-type: none"> 1. Form 395-B (filed annually w/FCC) 2. Public Inspection File 3. Form 396 excluding data previously required (filed at renewal w/ FCC) 4. Form 396-A (filed with construction permit, assignment or transfer application) 5. Mid-Term Review (TV & radio stations with 10 full-time employees) 6. Initial Election Statement (filed once) 7. Statement of Compliance (filed every two years)

⁸Form 395-B which traditionally is required to be included in the Public Inspection File, 47 C.F.R. §73.3526(e)(7) (1998), combined with information broadcasters have historically had to collect in the past in order to complete old Form 396, must be placed in broadcasters' Public Inspection File and submitted at renewal as part of a Public File Report.

CERTIFICATE OF SERVICE

I, Jeneba Jalloh Ghatt, certify that on this 20th day of April, 2000, I caused copies of the foregoing "Opposition to Petition for Partial Reconsideration and Clarification" to be served by mail, first class postage prepaid, to the parties listed on the attached service list and on:

Henry L. Baumann
Jack N. Goodman
Lori J. Holy
National Association of Broadcasters
1771 N Street, NW
Washington, DC 20036


Jeneba Jalloh Ghatt